

37 Am. Jur. 2d Fraud and Deceit § 172

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

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IV. False Representations

G. Representations and Statements as to Particular Matters

3. Value, Cost, and Income of Property

a. Value

§ 172. Market value or market price

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#) , 27, 28

While different conclusions have been reached under varying fact situations, most of the courts support the proposition that representations of market price or market value are not necessarily mere representations of opinion, but are, or at least under some circumstances may be, representations of fact on which fraud may be predicated.¹ For instance, a representation that a certain kind of property, constantly sold, has a market at certain figures and that it readily sells at those figures, is not a statement of opinion, but one of fact, upon which fraud may be predicated.² Under this view, although intrinsic value may be the subject of opinion only, a statement as to the market value of a stock which has an ascertainable market value is a statement of a fact and not the mere expression of an opinion.³ Also, a complaint by vendors that their real estate brokers misrepresented to them the market value of their home, the lowest price at which their home would sell, and the length of time needed to sell the home, states a cause of action for fraud where the brokers' representations can be found to have been meant by the parties to be understood as statements of fact to be relied upon rather than as expressions of mere opinion to be accepted solely as such.⁴ Likewise, evidence supports a jury verdict in favor of a trust that invested in a cattle-raising venture and against the providers of feedlot services who induced the trust to make the investment where the feedlot providers misrepresented the market value and profitability of the cattle under the plan, including a claim that the cattle would sell for a certain price as of a certain futures-trading date, resulting in an operating loss and lost profits to the trust.⁵

Some cases, however, support the doctrine that representations as to market price or market value of stock or of other property, where the truth is readily obtainable by both parties, are ordinarily representations of opinion merely, which will not constitute a basis for fraud.⁶ Accordingly, a representation of the market value of a commodity is merely an opinion that cannot be made the basis of a recovery for fraud and deceit in the absence of a confidential relationship between the parties.⁷ The doctrine that

representations as to the market value of an article or commodity are mere expressions of opinion, and not statements of fact, is limited in its operation to familiar articles and commodities of commerce whose market value is easily ascertainable and does not apply to sales of articles or commodities whose market value is difficult of determination, especially when such articles or commodities are offered for sale by a vendor who is familiar with their true worth and real market value, to the vendee, who is entirely ignorant thereof, and who buys in reliance on the vendor's positive statements concerning the market value.⁸

Fraud may be predicated on false representations of market value and may constitute a defense to an action for the purchase price of property so misrepresented⁹ or a defense to an action on notes given for the purchase price.¹⁰ In some instances, however, such statements have been held to be opinionative and not sufficient to form the basis for a defense on the ground of fraud.¹¹

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Footnotes

- 1 [Fourth Nat. Bank v. Webb](#), 131 Kan. 167, 290 P. 1, 71 A.L.R. 619 (1930) (market value of corporate stock); [Sunderhaus v. Perel & Lowenstein](#), 215 Tenn. 619, 388 S.W.2d 140 (1965); [Gray v. Wikstrom Motors](#), 14 Wash. 2d 448, 128 P.2d 490 (1942).
- 2 [Gray v. Wikstrom Motors](#), 14 Wash. 2d 448, 128 P.2d 490 (1942) (standard selling price of a certain model of car).
- 3 [Fourth Nat. Bank v. Webb](#), 131 Kan. 167, 290 P. 1, 71 A.L.R. 619 (1930).
- 4 [Duhl v. Nash Realty Inc.](#), 102 Ill. App. 3d 483, 57 Ill. Dec. 904, 429 N.E.2d 1267, 33 A.L.R.4th 928 (1st Dist. 1981).
- 5 [Hedley Feedlot, Inc. v. Weatherly Trust](#), 855 S.W.2d 826 (Tex. App. Amarillo 1993), writ denied, (Feb. 2, 1994).
- 6 [Lilienthal v. Suffolk Brewing Co.](#), 154 Mass. 185, 28 N.E. 151 (1891) (market value of hops).
- 7 [Fossier v. Morgan](#), 474 S.W.2d 801 (Tex. Civ. App. Houston 1st Dist. 1971).
- 8 [Fourth Nat. Bank v. Webb](#), 131 Kan. 167, 290 P. 1, 71 A.L.R. 619 (1930); [Griesa v. Thomas](#), 99 Kan. 335, 161 P. 670 (1916).
- 9 [Hetland v. Bilstad](#), 140 Iowa 411, 118 N.W. 422 (1908).
- 10 [Fourth Nat. Bank v. Webb](#), 131 Kan. 167, 290 P. 1, 71 A.L.R. 619 (1930).
- 11 [Kincaid v. Price](#), 82 Ark. 20, 100 S.W. 76 (1907) (land); [Lilienthal v. Suffolk Brewing Co.](#), 154 Mass. 185, 28 N.E. 151 (1891) (notes).

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